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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,101	02/23/2001	Isabelle Rollat-Corvol	05725.0807	4969

7590

07/30/2002

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EXAMINER

WILLIS, MICHAEL A

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 07/30/2002 //

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/719,101

Applicant(s)

ROLLAT-CORVOL ET AL.

Examiner

Michael A. Willis

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-106 is/are pending in the application.
- 4a) Of the above claim(s) 59,61-68,70-77,80-82 and 85-87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-58,60,69,78,79,83,84 and 88-106 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Applicant's response of 6 May 2002 is entered. Claims 38-106 are pending. Any previous rejections that are not restated in this Office Action are hereby withdrawn. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

Claims 59, 61-68, 70-77, 80-82, and 85-87 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 10. Applicant's election with traverse of branched sulfonic polyesters for the species of tacky polymer and octylacrylamide/acrylate/butylaminoethyl/methacrylate copolymer as species of fixing polymer in Paper No. 10 is acknowledged. The traversal is on the ground(s) that it would not be unduly burdensome for the Examiner to search all the claimed compounds. This is not found persuasive because the number of polymers encompassed by the claims is so large as to constitute a burden.

The requirement is still deemed proper and is therefore made FINAL.

Response to Arguments

Claims 38-58, 60, 69, 78-79, 83-84, and 88-106 are rejected under 35 U.S.C. 102(b) for reasons as stated previously. Applicant's arguments are considered as they

apply to the new claims. Applicant argues that Lee does not teach at least one tacky polymer having a glass transition temperature (T_g) of less than 20 degrees C and at least one fixing polymer having a glass transition temperature greater than 15 degrees C. Applicant asserts that because Applicant's combination is not set forth "clearly and unequivocally" in Lee, the reference has not placed the invention in the public domain.

Applicant's argument is not convincing. Lee discloses that the most preferred water-insoluble polymeric resins include polyesters functionalized with a sulpho group such as Eastman AQ polymers (see page 3, lines 15-20), meeting the limitation of a tacky polymer of the instant application. Acrylate-based copolymers to be used advantageously as the water-soluble amphoteric polymer of the composition include octylacrylamide/acrylates/butylaminoethyl methacrylate copolymers (see page 3, lines 30-37), meeting the limitation of a fixing polymer. Such materials are available as AMPHOMER LV-71 (see page 3, lines 32-33). While the reference does not disclose the T_g of the recited polymers, such property is inherent to the polymers.

The following new grounds of rejection is made:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.


Claims 38-58, 60, 69, 78-79, 83-84, and 88-106 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (EP 0 551 749 A2). Lee teaches a hair treatment composition comprising a water-insoluble polymeric resin and a water-soluble amphoteric polymer (see abstract; page 3, lines 6-50; and pages 7-8, claims 1-8). Most preferred water-insoluble polymeric resins include polyesters functionalized with a sulpho group such as Eastman AQ polymers (see page 3, lines 15-20), meeting the limitation of a tacky polymer of the instant application. Acrylate-based copolymers to be used advantageously as the water-soluble amphoteric polymer of the composition include octylacrylamide/acrylates/butylaminoethyl methacrylate copolymers (see page 3, lines 30-37), meeting the limitation of a fixing polymer. Such materials are available as AMPHOMER LV-71 (see page 3, lines 32-33). While the reference lacks examples of compositions with AQ 1350, the reference specifically teaches polyesters of ethylene diglycol/cyclohexanedimethanol/isophthalates/sulphoisophthalates resins (see page 3, lines 20-30). It is the position of the examiner that such a teaching meets the limitations of AQ 1350.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael A. Willis whose telephone number is (703) 305-1679. The examiner can normally be reached on alt. Mondays and Tuesday to Friday(9am-6:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russell Travers (acting SPE) can be reached on (703) 308-4603. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.


Michael A. Willis
Examiner
Art Unit 1617

maw
July 29, 2002


RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200